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KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

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FACSIMILE
(202) 955-9792
www.kelleydrye.com

DIRECT LINE (202) 887-1230
E-MAIL: GMorelli@KelleyDyre.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 1, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Communication
CC Docket No. 96-98 (*UNE Remand Proceeding*)

Dear Ms. Salas:

I. Introduction

The unbundling obligations contained in the Telecommunications Act of 1996 ("1996 Act") were intended to open the existing exchange network to competitive providers. Over the past several months, Allegiance Telecom and Verizon have filed proposals that would dramatically diminish the unbundling obligations of incumbent local exchange carriers ("ILECs") under the 1996 Act.[1] However, with local competition at a critical juncture, it is more vital than ever that the Commission's unbundling regime provide a framework that is both stable and useful for competitive entry.

Although targeted at unbundled local switching, the Allegiance/Verizon approach is corrosive to the Commission's entire unbundling framework. Access to local switching is one of core unbundling obligations established by Congress. Unbundled local switching was included in the Section 271 competitive checklist, and repeatedly

[1] *See* Letter from Thomas Jones, Counsel for Allegiance Telecom, to Magalie Roman Salas, Secretary, Federal Communications Commission, January 30, 2001 ("Allegiance Ex Parte"); Letter from Gordon Evans, Vice President Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, March 12, 2001 ("Verizon Ex Parte").

referenced in the accompanying Conference Report.[2] Unbundled local switching is as much a part of the fabric of the 1996 Act as unbundled loops and unbundled transport. Weaken access to unbundled local switching and the Act itself begins to unravel. The recent petition by three RBOCs to cease offering high-capacity loops (in addition to dedicated transport) illustrates the speed at which the ILECs will seek further erosion in the Commission's unbundling scheme.[3]

As explained below, the impairment analysis recommended by Allegiance and Verizon is fundamentally flawed because it *assumes* that self-provisioned local switching is a viable substitute for unbundled local switching, despite unambiguous evidence to the contrary. The record is clear that CLEC-owned switches generally do not offer the same services, serve the same customers, cover the same geography, or achieve volumes comparable to switching purchased as an unbundled network element. As a result, it is not possible for the Commission to evaluate the impairment experienced by carriers seeking access to unbundled local switching by observing that other carriers, serving different customers, over much smaller areas, and at fractional volumes, have installed their own local switches.[4]

Just as important, however, are the competitive consequences that would result from prematurely removing local switching from the ILECs unbundling obligations. As shown by WorldCom and BellSouth,[5] the Allegiance/Verizon approach is open to wide interpretation and would have a dramatic – indeed preclusive – effect on competition for small business, and by extension, residential customers. WorldCom estimates that the Allegiance/Verizon approach could remove local switching in 114 cities nationwide, while BellSouth's analysis would immediately eliminate local switching in 19 cities in its region. As shown below, given the importance of ubiquity to entry strategies relying on unbundled local switching, eliminating competition in these cities is effectively the same

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2 *See e.g,* Joint Explanatory Statement of the Committee of Conference, pages 3, 33.

3 Joint Petition by BellSouth Corporation, SBC Communications and Verizon Telephone Companies, CC Docket 96-98, ("ILEC Joint Petition"), filed April 5, 2001.

4 Moreover, even where there may be *some* overlap between carriers with self-provisioned local switches and those relying on unbundled local switching, the existence of the former does not rebut the impairment of the latter -- unless the Commission is prepared to validate *every* aspect of the switch-based business plan to determine that it is profitable and sustainable, both in the short and long term. Given the inadequacy of the capital markets to reliably identify profitable local entry strategies, the Commission should be (and, in prior decisions, has been) appropriately reluctant to adopt such a role.

5 *See* Letter from Chuck Goldfarb, WorldCom, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, March 29, 2001; Letter from Kathleen Levitz, BellSouth, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, March 27, 2001 ("BellSouth March 27 Letter").

as eliminating competition in the eight states in which they reside and, as a result, in the BellSouth region as a whole.[6]

The Commission should not abandon the goal of mass-market competition for small business and residential consumers as these carriers recommend. As explained by MetTel, the skills needed to compete in the "analog market" transcend business and residential distinctions.[7] If competition for small business customers is truncated, residential competition will be harmed as well.[8] Although some PACE Coalition members may currently serve only one customer segment or the other, there is little doubt that there is broad overlap between the groups, separated more by the incumbent's strategic pricing than by any network or technology distinctions.

The engine of our economy remains the small business, where new ideas are introduced and popular myths discarded. The most fertile ground for local competition would be the small business market[9] -- but only if the tools needed to serve smaller locations are made available. Once competition takes root, the Commission should reasonably expect its extension to residential customers as well, because the entry strategy itself is customer-neutral. To achieve this competition, however, requires that the Commission reject recommendations, such as those offered by Allegiance and Verizon, that would circumscribe the critical value of unbundled local switching to provide a ubiquitous serving platform for the market it is best suited to serve, i.e. the residential and small business customer.

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6 Of the nine states in the BellSouth region, unbundled local switching would only remain available at UNE rates in Mississippi. Given the level of UNE rates in that State, however, there is little reason to expect any real competition there in the near term.

7 *See* Letter from Marshall Aronow, CEO, MetTel, to Michael Powell, Chairman, Federal Communications Commission, CC Docket No. 96-98, April 3, 2001.

8 Moreover, small businesses are as deserving of competitive choices as any other customer. Consider the critical role played by small businesses in the nation's economy. Small businesses employ 53% of the private non-farm workforce and provide 47% of all sales. In addition, from 1990 through 1995, small businesses created 76% of all new jobs. Small businesses provide most initial on-the-job training, and are more likely to employ younger and older workers, former welfare recipients, and women. Source: *The Facts About Small Business – 1999*, U.S. Small Business Administration, Office of Advocacy. There is no single consensus definition of "small business" and the Census Bureau publishes economic information at varying levels of detail. For purposes of the summary statistics quoted here, "small business" is defined as a business with less than 500 employees.

9 Nearly 73% of all business locations have less than 20 employees, while 80% have less than 50 employees. Source: 1997 Economic Census, United States Census Bureau.

II. The Baseless Assumptions Underlying the Allegiance/Verizon Approach

Unlike the Commission's existing impairment framework – which evaluates the self-provisioning of a particular network element as only one of a number of factors[10] – Allegiance and Verizon recommend an impairment analysis that looks *exclusively* at the number of local switches in a market.[11] To begin, there is no verified source as to the number of local switches in an MSA, or even a consensus definition of what constitutes a "switch" with today's technology.[12] More to the point, however, is the fact that CLEC-provided switches are not substitutes for unbundled local switching. As the record in this proceeding makes clear, CLEC-provided switches serve a different customer segment, provide different services, serve a more geographically limited area, and operate at much smaller volumes than unbundled local switching in a UNE-P configuration. Consequently, the mere presence of a CLEC switch (whatever the term is ultimately determined to mean), does not rebut the impairment that confronts an entrant seeking to offer mass-market services to residential and small business customers over a broad geographic footprint.

(A) Target Market

The record is clear that the number of CLEC switches in a market does not demonstrate that those switches are capable of serving residential and small business customers in a commercially viable manner. Consider the following:

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10 *See e.g.* Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26, Released January 19, 2001, "*Line Sharing Order*" at ¶ 51.

11 The principal differences between the Allegiance and Verizon approaches are the number of switches needed to invoke a restriction (Allegiance would require four CLEC switches, while Verizon would require only two), and the scope on the restriction (Allegiance would deny access to unbundled local switching to serve any business customer, while Verizon would deny access to serve any customer, residential and business alike).

12 Before the Commission could consider adopting the Allegiance/Verizon approach, it would be required to adopt a market validation procedure, as well as a standard definition of exactly what technology and technological configuration constitutes the "presence of a CLEC switch." Even the ILECs acknowledge that there would need to be guidance concerning the appropriate definition of what constitutes a "switch." *See* Letter from Kathleen Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, March 27, 2001.

* Focal Communications Corporation has informed the Commission that it "...concentrates exclusively on customers that have a current need for DS1 communications functionality or higher;"[13]

* Intermedia Communications' lead product (unifiedvoice.net^{SM}) is designed for customers requiring DS-1 connectivity;[14]

* WorldCom's facilities-based strategy is used to serve digital customers with either T-1 or ISDN-PRI needs, connecting to digital PBXs that typically aggregate at least 30 analog lines;[15]

* InfoHighway Communications, which uses UNE-P and leases switch capacity to serve larger customers, has shown that alternative local switching capacity in the New York market – the most *advanced* local market in the nation – is only practically available to serve customers with above DS-1 volumes;[16]

* CBeyond has admitted that it has no intention of serving analog customers at all – it only intends to serve customers using high-speed, digital (DS-1) facilities;[17]

* Customer size and revenue distribution data for Time-Warner and XO clearly demonstrate that these carriers focus on very large digital customers and the provision of data services;[18]

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13 Letter from Richard Metzger and Patrick Donovan to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, May 19, 2000, page 2.

14 *See* Letter from Genevieve Morelli to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, July 19, 2000, page 7.

15 Letter from Chuck Goldfarb to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, June 21, 2000, page 2.

16 *See* Attachment 6 (Affidavit of Peter Karoczkai, Senior Vice President – Sales and Marketing, InfoHighway Communications) to Letter from Genevieve Morelli to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, July 19, 2000.

17 *See* Letter from Patrick Donovan, Counsel for CBeyond Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket 96-98, December 21, 2000, page 1.

18 *See e.g.*, Letter from Albert Kramer and Jacob Farber, Counsel for Birch Telecom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, January 17, 2001.

* Twelve switch-based CLECs – including, New South, McLeod, and CoreComm – have registered their support for greater availability of unbundled local switching;[19] and

* Aggregate data that characterizes the market overall demonstrates conclusively that switched-based providers have focused on achieving asymmetric traffic patterns that are not indicia of widespread competition for analog customers.[20]

Given these facts, it is not surprising then that even SBC has acknowledged that the degree of competition for customers with more than 20 lines is far greater than for smaller business customers.[21] While some CLECs maintain that they partially overlap with the market served by unbundled local switching, the record reveals such plans are the exception and not the rule.[22] The fundamental assumption of the Allegiance/Verizon approach – that a CLEC-switch should be *assumed* to serve residential and small business customers – is contradicted by the weight of evidence in the proceeding.

(B) Ubiquity

The record also makes clear that CLEC-provided switches are effectively limited to serving customers in a few select end offices, rather than the ubiquitous service area that is possible where unbundled local switching is available.[23] Contrast the geographic focus of Allegiance Telecom to that of one of the *smallest* PACE members, Access Integrated Networks.

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19 Letter from Greg Lawhon, et al. to William Kennard, Chairman, Federal Communications Commission, CC Docket 96-98, January 4, 2001 ("CLEC Letter").

20 *See* Letter from Genevieve Morelli to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, August 24, 2000, Attachment 1.

21 *See* Letter from Genevieve Morelli to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, July 11, 2000, page 7.

22 The PACE Coalition would note that the few CLEC letters that the Commission has received in support of the Allegiance/Verizon approach are generally either from carriers clearly not interested in serving this market (such as XO and Time Warner), or carriers that are affiliated with Allegiance's management. For example, Royce Holland, CEO of Allegiance, serves on the Board of Directors of Choice One, while Thomas Lord, CFO of Allegiance, is a Director of CBeyond. In contrast to the broad CLEC consensus supporting greater availability of unbundled local switching, the voices in opposition are narrow and in some cases are interrelated.

23 *See* Letter from Chuck Goldfarb, WorldCom, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, March 2, 2001, page 3.

Comparative Market Coverage

	Access Integrated Networks	Allegiance Telecom[24]
Mode of Entry	UNE-P	UNE-Loop
Geographic Focus	Generally Statewide	Limited Areas of City
Markets Entered	8 States	27 Cities
End-Offices Served	738	636
COs per Market	92	24

The above statistics are not unique to these two carriers. Switch-based providers are limited in geographic reach to dense markets where they have established collocations, while a critical benefit of unbundled local switching is that it enables the entrant to serve an entire footprint, offering services that appeal to a broad cross-section of customers. In contrast, there is no evidence that supports the claim that CLEC switches, even where deployed in a central business district, offer services broadly to residential and small business customers throughout an MSA. Nor would the availability of even an unrestricted EEL change the economics of serving distant customers that are too small to serve using a DS-1. Although EELs may be useful to serve DS-1 (and above) customers in more distant central offices, there is no evidence that EELs provide a viable means of serving analog customers.[25]

(C) Market Trends - Trickle Up, Trickle Out

In addition to demonstrating that CLEC switches focus today on larger customers, recent evidence suggests that switched-based CLECs are gravitating to even larger customers over time. Consider, for instance, the effect of XO Communications's decision to migrate more towards the provision of data services for larger customers:

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24 Source: 4th Quarter 2000 Earnings Announcement, Allegiance Telecom.

25 The Coalition notes that there appears to be some confusion concerning its position on the availability of EELs. *See e.g.* Verizon Ex Parte, page 6, characterizing the PACE Coalition as stating that there is "no real reason" to condition the restriction on unbundled local switching to the availability of an EEL. The Coalition has explained that the current FCC policy seems to establish exactly the same obligation to provide EELs irrespective of the availability of unbundled local switching – the carrier must order the EEL as a special access or private line circuit, then convert the circuit to UNEs, but only if the EEL complies with the 'predominant local use' test. In this environment, there is no linkage between the EEL and unbundled local switching because the ILECs' obligations are indifferent to whether unbundled local switching is available. However, before expanding any restriction on unbundled local switching beyond the densest central offices in the 50 largest markets it is important that DS-1 EELs (without restriction and without the added cost of the 'double order' process) be offered by the ILEC. Moreover, it is the Coalition's view that CLECs should be entitled to unrestricted EELs as a matter of law and, as such, the ILECs should offer EELs nationwide irrespective of the status of unbundled local switching.

Voice Grade Equivalents per Customer[26]
(XO Communications)

	4th Q 99	1st Q 00	2nd Q 00	3rd Q 00	4th Q 00	1st Q 01
VGEs/Customer	51.9	66.6	75.2	112.6	127.8	162.1
Average added in 2000		215.0				
Average added during 1st Quarter of 2001						921.6

Notably, the above table masks the true extent to which XO has shifted its business strategy to serving larger customers because the table reflects the effect of this decision on *average* customer line size, including the "smaller" customers that XO had initially served. By looking only at those customers and lines added by XO since the beginning of 2000, however, XO's change in emphasis becomes even more apparent. The average customer added in 2000 purchased 215 VGEs, more than four times XO's average at the end of 1999 (when the average was 52 VGEs).[27] Even more dramatic is that the average customer added during the first quarter of 2001 had 921 VGEs – nearly four times *again* the average that it served at the end of 1999.

The unbundled-loop/CLEC-switch business strategy predates the 1996 Act and has now had more than six years (in some States) to demonstrate its versatility. If the strategy was going to "trickle down" to smaller customers and broader markets, there would be ample evidence of this trend. Instead, the emerging trend-line for the strategy is "trickle up" – or "trickle out" -- as carriers shift their focus to larger customers, or exit the market. We offer this observation not as disparagement of the entry strategy. Indeed, many PACE Coalition members are themselves deploying switches and competing in this manner in the appropriate market segment. Our point is simply that the existence of a CLEC switch cannot be presumed to rebut impairment, especially in an environment where such switches focus on different customers, in more limited geographic regions, with a different product mix, than unbundled local switching.

(D) Volume

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26 Source: Lehman Brothers, Quarterly Earnings Review, February 6, 2001 and April 27, 2001.

27 Notably, even the average customer size in 1999 was more than twice the level needed to justify a high-speed digital connection. The point is that XO's customer base never overlapped with the market served by unbundled local switching, and has moved progressively away from this market over the past year.

One of the key impairments diminished by access to unbundled local switching are the costs, delays and reliability concerns associated with manual provisioning systems.[28] Because unbundled local switching (in combination with unbundled loops) can be provisioned electronically, market experience demonstrates conclusively that far greater competitive levels are achieved with access to unbundled local switching than without it.

Commercial Volumes
(UNE-P versus Hot Cuts – New York)[29]

Month	Platform	Hot Cuts
Oct-00	253,521	4,644
Nov-00	241,105	4,292
December-00	254,112	6,878
January-01	225,139	2,650
February-01	201,066	4,137
Average	234,989	4,520

The above table quantifies, in compelling terms, the very real impairment corrected through access to unbundled local switching. If the Commission were to prematurely withdraw access to unbundled local switching, it would impose on the hot-cut process a 50-fold increase in competitive volume – far more than Verizon would be able to absorb. As the above discussion demonstrates, there is simply no support for the fundamental assertion underlying the Verizon/Allegiance approach – i.e., that the mere presence of a CLEC switch in a market rebuts the impairment faced by other CLECs seeking to broadly offer service to residential and smaller business customers.

III. The Adverse Consequences of the Allegiance/Verizon Approach

Not only does the Allegiance/Verizon approach fail to track, much less measure, impairment in any meaningful way, its adoption would have immediate and significant consequences for local competition and the integrity of the Commission's unbundling regime.

(A) Competitive Impact

Although Allegiance has not produced any data estimating the impact of its proposal, BellSouth has filed State-by-State information as to which markets would

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28 *See* Letter from Genevieve Morelli to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, February 14, 2001.

29 Source: Verizon New York Performance Assurance Plan, Observations for Metrics PR-4-04 and PR-4-05 (platform orders with dispatch and without dispatch), and PR-9-01 (number of hot cuts).

immediately experience a ban on the use of unbundled local switching to serve business customers. An analysis of these markets demonstrates that the proposal would effectively eliminate unbundled local switching business plans in the BellSouth region. While BellSouth's proposed ban on local switching would theoretically apply "only" in 19 cities, unbundled local switching would effectively be eliminated as an entry strategy statewide. This is because entry strategies relying on unbundled local switching are intended for mass-market application, which requires ubiquity (or, at least, near ubiquity) to be successful. Punching "holes" in the availability of unbundled switching destroys a central characteristic of the entry strategy – if the "hole" is sufficiently large, the strategy fails, even if some areas theoretically remain open.

The following table shows that the practical effect of the Allegiance proposal in the BellSouth region would be to eliminate unbundled local switching-based entry strategies throughout the entire BellSouth region. As the table shows, such a large portion of each State's market would be foreclosed as to eliminate any reasonable effort at a mass-market strategy that depends upon broad application for success. This is not only true for generalized measures of the excluded market (such as population), but is even more true of measures that look at the impact on the small business marketplace.

Market Foreclosure Under Allegiance/Verizon Approach[30] (BellSouth Region)[31]

State	Percentage of States' Population in Excluded Markets	Percentage of Small Businesses[32] in Excluded Markets Measured by:		
		Firms	Employees	Payroll
Alabama	33%	35%	35%	40%
Florida	46%	54%	46%	56%
Georgia	47%	55%	53%	63%
Kentucky	25%	29%	30%	34%
Louisiana	42%	45%	45%	49%
North Carolina	46%	51%	51%	58%
South Carolina	36%	39%	39%	43%
Tennessee	52%	57%	58%	65%
Total	43%	49%	46%	54%

The above analysis underestimates the degree of market foreclosure actually experienced by an entrant in two ways. First, the analysis includes markets (such as Tampa, Florida) served by an ILEC other than BellSouth. The result is an understatement of the percentage of BellSouth's market where an entrant would be denied access to unbundled local switching. In addition, the table does not address the effect on an entrant's cost structure caused by denying entry to urban areas. Because loop rates are deaveraged, with the lowest rates in urban markets, UNE-P based entrants would be limited to only the highest cost areas. Between the substantial reduction in addressable market (quantified in the above table), and the increase in average UNE costs (not shown), the practical effect would be to foreclose mass-market competition for the entire State.

Data from New York also demonstrates the severe impact that the elimination of unbundled local switching would have on local competition, in particular on local

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30 Source: United States Census Bureau, 1998.

31 The source of the list of MSAs in which unbundled local switching would be restricted to residential customers is the BellSouth March 27 Letter.

32 The Census Bureau's reporting of firm size at the MSA level is more limited than the data collected statewide. As a result, the definition of "small business" used in the analysis is a firm with less than 20 employees. Although the analysis is focused on businesses with less than 20 employees, these firms dominate the small business market. In the affected BellSouth MSAs, more than 83% of the firms in these markets are small businesses with less than 20 employees. Consequently, the analysis reasonably reflects conditions overall.

competition that relies on unbundled loops (either alone or in combination with unbundled switching) to serve residential and small business customers. As indicated earlier, Verizon's average provisioning activity for unbundled loops provisioned in combination with unbundled local switching (i.e., UNE-Platform) is approximately 50 times the level of unbundled loops provisioned as a "hot cut." Verizon has previously submitted that 93% of its UNE-P orders were for residential customers.[33] Assuming that this percentage is correct, the claim actually demonstrates that unbundled local switching is critical to competition for small business as well as residential customers in New York.

Competitive Importance of Unbundled Local Switching to UNE-Based Local Competition in New York (Average Provisioning Levels – Oct-00 to Feb-01)

Entry Strategy	Residential	Business
Loops with Unbundled Local Switching	218,539	16,449
Stand-Alone Loops (Hot Cuts)[34]	0	4,520
Total	218,539	20,969
Reduction in competition without UNE-P	100%	78.4%

As the above table shows, even if unbundled switching is used more heavily to serve residential customers,[35] its importance to competition for small businesses is not lessened. Without access to unbundled local switching, competition in the small business market would be significantly reduced.

(b) Implications for Other Network Elements and Policies

The Allegiance/Verizon "impairment analysis" for local switching represents a substantial departure from (if not abandonment of) prior Commission decisions concerning impairment and the Commission's intention to assure that retail distinctions in ILEC tariffs not be used to deny entrants access to UNEs. Indeed, the

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[33] Letter from W. Scott Randolf, Verizon, to Magalie R. Sales, Secretary, Federal Communications Commission, CC Docket No. 96-98, September 27, 2000.

[34] The analysis assumes that "hot cuts" are used exclusively to serve business customers. To the extent this assumption overstates the number of business hot cuts, the analysis understates the importance of UNE-P to competition for small business customers. As a result, the table should be viewed as a conservative measure of the importance of unbundled local switching to competition for small business customers.

[35] The most likely explanation for such a relationship is that two large entrants, MCI-WorldCom and AT&T, initially used unbundled local switching to serve residential customers only. PACE Coalition members, as well as other entrants, however, rely on unbundled local switching to serve a more diverse customer base and require its continued availability to serve smaller business customers.

Allegiance/Verizon approach jeopardizes the entire unbundling regime, placing the future of local competition in doubt.

The incumbent LECs have already revealed how a decision to remove unbundled local switching from the list of network elements would soon implicate the availability of other network elements. For instance, Verizon recommends not only the lifting of its unbundling obligation with respect to local switching, it also recommends eliminating the requirement that it unbundle dedicated transport and dark fiber. Moreover, Verizon has joined with two other RBOCs (SBC and BellSouth) to petition for the removal of dedicated transport, as well as high capacity loops. These pleadings make clear that the ILECs intend to move quickly to eliminate unbundling altogether.

In addition, the Allegiance/Verizon proposal runs counter to the Commission's impairment analysis that resulted in the unbundling of high-frequency spectrum and line sharing. In the impairment analysis that supported its *Line Sharing Order*, the Commission concluded that carriers seeking to offer advanced services should not also be required to provide voice service.[36] Many members of the PACE Coalition seek to offer advanced data services and the Coalition supports the rationale underlying the Commission's decision to require the unbundling of high frequency spectrum. However, these members also desire to offer voice services through access to unbundled local switching. This desire to do *more* does not mean PACE Coalition members are impaired *less* – just as "pure" xDSL-based providers would be impaired if required to install circuit switches and establish the infrastructure to serve voice customers, Coalition members are impaired if required to install circuit switches in addition to the expensive facilities and functionalities that they are investing in to innovate and differentiate themselves from the ILECs.[37]

Moreover, the principle underlying the *Line Sharing Order* that an entrant to one market should not be required by regulatory policy to compete in another, if consistently applied, should mean that an entrant cannot be forced to compete for high-capacity digital customers in order to be able to compete in the market for more conventional analog services. Hidden within the Allegiance/Verizon approach, however, is just such a requirement. While Allegiance represents that it serves analog customers via its own switches, it only does so as part of a strategy to serve large businesses. The goal of entry and competition is innovation, not replication. Even if Allegiance has found a successful

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36 *Line Sharing Order*, ¶ 49.

37 The PACE Coalition supports the Commission's findings in its *Line Sharing Order* as well as its decision to require that ILECs unbundle dedicated transport, dark fiber and all local loops. Each of these decisions lays an important foundation for local competition. Nevertheless, the Commission should be aware of the interrelationship between these decisions, and the inherent danger that will follow any decision that weakens its commitment to unbundling any network element.

entry strategy – a conclusion that remains in doubt – that should not translate to a impairment analysis that limits competition to the "Allegiance model." The PACE Coalition opposes any impairment analysis that demands that entrants must first serve large customers before they may compete for smaller ones.

Finally, the impairments identified by the PACE Coalition are systemic to the analog marketplace – a marketplace that consists of both small business and residential customers. While Allegiance has recommended a default restriction that tracks the residential-business distinction in ILEC tariffs, it has offered no explanation as to why an impairment finding would track this division.[38] Nor has Allegiance explained how the Commission would reconcile such a blanket restriction with its rule that an ILEC may not limit the availability of an individual interconnection, service, or network element to those requesting carriers serving a comparable class of subscribers or providing the same service as the original party to an interconnection agreement.[39]

The Commission's impairment analyses and unbundling rules should provide the foundation for competition that erodes artificial tariff boundaries, not embrace restrictions intended to sustain them. The Act's provisions concerning universal service reform were intended to address instances where social engineering should take precedence over traffic engineering and innovation.[40] The impairment that requires access to unbundled local switching relates to the size of the customer and its geographic dispersion, not its retail classification.

V. Conclusion

Over the past several months, the PACE Coalition has demonstrated that its members (and CLECs more generally) would be impaired without expanded access to unbundled local switching to serve analog customers, including customers with greater than three lines that are not yet sufficiently large to justify a high-speed digital connection. This analysis has been validated by market facts time and again.

The Coalition believes that the record supports a restriction limited to the top 50 MSAs at the DS-1 level. However, we have also sponsored evidence that would enable the Commission to *approximate* where customers that have not yet migrated from analog

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38 For its part, Verizon simply claims that there is no impairment to serve *any* market, even though it has substantially reduced its own out-of-region entry from that promised to Congress when it announced its merger with GTE. *See* Transcript of Hearing Before U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Business Rights and Competition, September 15, 1998, pp. 25-26.

39 47 C.F.R § 51.809(a).

40 This is not to suggest that the PACE Coalition endorses the ILEC claim that business customers subsidize residential customers.

to digital facilities could be economically served by a high-speed facility. We have shown through unrefuted economic analysis that such a cross-over could be as low as 16 lines.

Finally, we have demonstrated that any approach that depends on a "count" of CLEC switches (such as the Allegiance/Verizon approach) flies in the face of substantial record evidence that such switches as a rule serve different customers, with different products, in more limited geographic circumstances than are served with unbundled local switching. Because CLEC switches are not a substitute for unbundled local switching, their mere presence does nothing to challenge our impairment analysis.[41]

Accordingly, the PACE Coalition respectfully recommends that the Commission increase its line-based restriction to more accurately reflect the point at which a customer is sufficiently large to justify a high-speed connection to a CLEC-provided local switch in the top 50 MSAs.

Sincerely,

Genevieve Morelli

Genevieve Morelli

cc: Chairman Michael Powell
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Gloria Tristani
Dorothy Attwood
Michelle Carey
Glenn Reynolds
Jonathan Reel
Kyle Dixon
Jordan Goldstein
Sarah Whitesell

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41 The PACE Coalition also notes that the Allegiance/Verizon approach raises a number of implementation issues that cannot be addressed on the basis of this record. Such an approach would require, at a minimum, a clear definition of what constitutes a "CLEC switch," a demonstration that such switches are indeed serving smaller analog customers throughout the MSA, and a finding that ILECs could "hot cut" competitive volumes at a cost, reliability and quantity comparable to that achieved in combination with unbundled local switching. Finally, it would require a regulatory process that would permit entrants to challenge undocumented ILEC assertions.